

## Remarks

In response to the restriction requirement set forth in the Office Action mailed January 29, 2003, Applicants provisionally elect Species I (containing claims 1-10) for examination, with traverse.

The Office Action requiring restriction (made subsequent to the first Office Action dated October 23, 2002) requires restriction between Species I, II, and III. The Commissioner may require restriction if two or more independent or distinct inventions are claimed in one application (35 USC 121). However, *“if the search and examination of an entire application can be made without serious burden, the examiner must examine it on the merits, even though it includes claims to independent or distinct inventions.”* (MPEP 803). Applicants respectfully submit that the search and examination was not a serious burden as the application was examined and a first Office Action issued without a requirement for restriction.

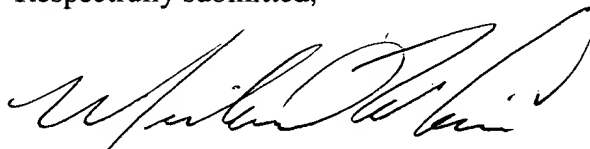
However, subsequent to the first Office Action, an Office Action dated January 29, 2003 (and after Applicants' reply to the first Office Action was received in the Office) was received by Applicants requiring restriction. *“Before making a restriction requirement after the first action on the merits, the examiner will consider whether there will be a serious burden if restriction is not required.”* (MPEP 811). Further MPEP states *“the examiner should make a proper requirement as early as possible in the prosecution, in the first action if possible, otherwise, as soon as the need for a proper requirement develops.”* Although it is clear that the examiner may make a restriction requirement at any time during the prosecution of the application, Applicants note that the timing of the restriction requirement is *“at the discretion of the examiner”*. (MPEP 811).

Whereas the Examiner has already put forth the effort required for the initial examination of the application (without serious burden), and similarly, whereas the Applicants have already put forth the effort to fully answer the Office Action, Applicants submit that it would be appropriate for Applicants' reply to the Office Action dated October 23, 2002 to be examined without imposing a restriction requirement at this time. Consequently, it is respectfully requested that the restriction requirement be withdrawn, and each of the claims 1-23 presently pending in this application be examined.

### **Conclusion**

The Applicants believe the claims are allowable over the prior art of record and are in condition for allowance. If there are any matters which may be resolved or clarified through a telephone interview, the Examiner is respectfully requested to contact the Applicants' undersigned attorney at the number indicated.

Respectfully submitted,



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Michael L. White  
WMS Gaming Inc.  
3401 N. California Avenue  
Chicago, Illinois 60618  
Reg. No. 39,421  
(773) 961-1267  
Attorney for Applicants